

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

|  |          |
|--|----------|
| -----  | <b>X</b> |
| BEACON SALES ACQUISITION, INC., d/b/a Allied | :        |
| Building Products and Beacon Roofing Supply, | :        |
|  | :        |
| Plaintiff,                                   | :        |
|  | :        |
| – v. –                                       | :        |
|  | :        |
| SHALOM AUERBACH,                             | :        |
|  | :        |
| Defendant.                                   | :        |
| -----  | <b>X</b> |

Case No. 7:19-cv-5060

**COMPLAINT**

Plaintiff Beacon Sales Acquisition, Inc. d/b/a Allied Building Products and Beacon Roofing Supply (“Beacon”) for its complaint against defendant Shalom Auerbach (“Auerbach”) alleges upon personal knowledge with respect to itself and its own acts, and upon information and belief as to all other matters, as follows:

**NATURE OF THE ACTION**

1. This is a breach of contract action concerning defendant Auerbach’s non-payment under a personal guarantee for goods sold by Beacon to non-party Solar Power Professionals, Inc. (“Solar”).

**PARTIES**

2. Beacon is a Delaware corporation in good standing. Beacon’s principal place of business is in Herndon, Virginia.

3. Auerbach is an individual residing in Monsey, New York.

**JURISDICTION AND VENUE**

4. The Court has jurisdiction of this action under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and complete diversity of citizenship exists.

5. The Court has jurisdiction over Auerbach because he resides in New York.
6. Venue is proper under 28 U.S.C. § 1391(b) because Auerbach resides in this District.

### **FACTUAL ALLEGATIONS**

#### **A. The Credit Application and Personal Guarantee.**

7. Beacon is a distributor of roofing and building materials.
8. Non-party Solar is a California corporation with its principal place of business is in Woodland Hills, California. It sells and installs solar panels.
9. On about December 12, 2017, Auerbach, in his personal capacity, executed a credit application and personal guarantee for the extension of credit by Beacon to Solar (the “Auerbach Agreement”).
10. Auerbach agreed to pay late charges in the event of late payments and Beacon’s attorneys’ fees if Beacon needed to collect payment. A true and correct copy of the Auerbach Agreement is attached as Exhibit A and incorporated by reference.

#### **B. Solar’s Indebtedness to Beacon.**

11. Between approximately July 2018 and January 2019, Beacon provided Solar with about \$115,787.47 of products (the “Goods”).
12. Solar placed orders to Beacon for the Goods.
13. Beacon issued invoices to Solar for the Goods between July 2018 and January 2019 (the “Invoices”). A true and correct copy of Beacon’s statement of account identifying the Invoices and the principal balance remaining for the Goods is attached as Exhibit B. A true and correct copy of the Invoices is attached as Exhibit C.
14. Under Beacon’s payment terms, payments of \$115,787.47 for the Goods were due

between July 2018 and January 2019.

15. Beacon shipped the Goods to Solar or persons designated by it.

16. Solar or its designees received the Goods.

17. The Goods were duly delivered as requested by Solar.

18. Solar and its designees accepted delivery of the Goods.

19. Solar did not reject the Goods.

20. Solar did not validly revoke its acceptance of the Goods.

21. Solar did not notify Beacon of any disputes about the quality of the Goods before this case was filed.

22. Solar received the Invoices.

23. Solar did not object to the Invoices before this case was filed.

24. Solar has failed to pay the Invoices.

25. Beacon obtained a default judgment for \$134,890.09 against Solar in the United States District Court for the Central District of California on May 13, 2019. *See* Case No. 2:19-cv-01485, [ECF No. 23](#).

**C. Auerbach Fails to Honor His Personal Guarantee.**

26. Beacon has requested that Auerbach pay Solar's debt for the Goods and he has failed to do so.

27. Auerbach is liable to Beacon in an amount to be determined at trial but that is expected to exceed \$165,000.00, including attorneys' fees, late charges, interest, and costs.

**FIRST CAUSE OF ACTION  
(Breach of Personal Guarantee against Auerbach)**

28. Beacon repeats and realleges the allegations set forth in the preceding paragraphs of the Complaint.

29. Auerbach executed the Auerbach Agreement and personally and unconditionally guaranteed all obligations of Solar to Beacon.

30. Beacon has demanded that Auerbach pay for the Goods and he has failed and refused to pay.

31. As a proximate result of Auerbach's breach of his obligations under the Auerbach Agreement, Beacon has been damaged and is entitled to recover from Auerbach an amount to be determined at trial but that is expected to exceed \$165,000.00, including attorneys' fees, later charges, costs, and interest.

### **PRAYER FOR RELIEF**

WHEREFORE, on the First Cause of Action against Auerbach, Beacon prays for a judgment against Auerbach as follows:

1. For an amount to be determined at trial but that is expected to exceed \$165,000.00, including attorneys' fees, late charges, costs, and interest.
2. For costs of suit herein incurred, including attorneys' fees; and
3. For Beacon to be granted such other, further or general relief as may be proper.

Dated: Eden, Utah  
May 30, 2019

Respectfully submitted,

/s/ David Mannion

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